

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Milton I. Shadur	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	00 C 3852	DATE	6/27/2001
CASE TITLE	Johnson Controls vs. Exide Corp. et al		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

DOCKET ENTRY:

- (1) ☐ Filed motion of [use listing in "Motion" box above.]
- (2) ☐ Brief in support of motion due ____.
- (3) ☐ Answer brief to motion due _____. Reply to answer brief due _____.
 (4) ☐ Ruling/Hearing on _____ set for _____ at _____.
 (5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
 (6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
 (7) ☐ Trial[set for/re-set for] on _____ at _____.
 (8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.
 (9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ General Rule 21 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).
- (10) ☒ [Other docket entry] Enter Memorandum Order. This Court grants Individual Defendants' motion to reconsideration only in part. In lieu of full disclosure under Rule 26(a), Individual Defendants' current up-front document production is to be limited to the same documents (if any) that they have already produced to the government in the criminal proceedings, and those documents shall be delivered to Johnson Controls' counsel forthwith.
- (11) ☒ [For further detail see order attached to the original minute order.]

<input type="checkbox"/>	No notices required, advised in open court.	ED-7 FILED FOR DOCKETING 01 JUN 28 AM 8:08	number of notices	Document Number 63
<input type="checkbox"/>	No notices required.		JUN 28 2001 date docketed	
<input checked="" type="checkbox"/>	Notices mailed by judge's staff.		IS docketing deputy initials	
<input type="checkbox"/>	Notified counsel by telephone.		6/28/2001 date mailed notice	
<input type="checkbox"/>	Docketing to mail notices.		SN	
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SN		courtroom deputy's initials	Date/time received in central Clerk's Office	

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DOCKETED
JUN 28 2001

JOHNSON CONTROLS, INC., et al.,)
)
 Plaintiffs,)
)
 v.)
)
EXIDE CORPORATION, et al.,)
)
 Defendants.)

No. 00 C 3852

MEMORANDUM ORDER

All three individual defendants in this action--Arthur Hawkins, Alan Gauthier and Douglas Pearson (collectively "Individual Defendants")--are under indictment in the Southern District of Illinois for alleged criminal conductis closely interwoven with the gravamen of this action brought against them and their codefendant Exide Corporation by Johnson Controls, Inc. and Johnson Controls Battery Group (collectively "Johnson Controls," treated as a singular noun for convenience). Because of the pendency of that indictment, this Court has followed its regular practice in comparable situations by granting Individual Defendants' earlier motion to stay these civil proceedings against them.¹

¹ In such situations the parties targeted by a criminal prosecution face a Hobson's Choice. If they were to comply with the customary broad discovery requests in the civil action, their disclosure could provide valuable information (or actual admissions) that would aid the government in the criminal prosecution. If on the other hand the criminal targets sought to dodge that bullet by invoking their Fifth Amendment privilege against self-incrimination, that could open them up to the adverse inference available to an adversary in civil cases

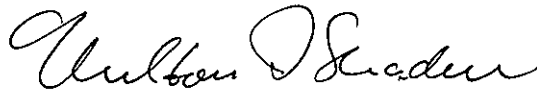
63

Later, during court proceedings on April 6, 2001, counsel for Johnson Controls proposed that discovery from Individual Defendants should proceed in this action to the extent that Fifth Amendment considerations do not come into play. This Court responded in part by directing the parties to comply with the recently revised version of Fed. R. Civ. P. ("Rule") 26(a)'s mandate for advance disclosure, but it also directed that the scope of such disclosure should conform to the pre-December 1, 2000 version of Rule 26(a). At that time counsel for only one of the three Individual Defendants were in court, and they did not interpose any objection to that order.

Now, however, other counsel for Individual Defendants have moved for reconsideration of that oral discovery order because of the self-incrimination concerns that have been referred to in n.1. In response, Johnson Controls' counsel have said they have not sought, and do not actively seek, full Rule 26(a) disclosures from Individual Defendants. But they do seek production in this litigation of the same documents (if any) that Individual Defendants have already produced to the government in their criminal proceedings. They cite extensive authority in support of that position, ranging from United States v. Hubbell, 530 U.S. 27, 35-36 (2000) on down.

(though not in the criminal prosecution itself)--see, e.g., Baxter v. Palmigiano, 425 U.S. 308, 318-19 (1976) and authorities cited there.

That position is persuasive. Accordingly this Court grants Individual Defendants' motion for reconsideration only in part. In lieu of full disclosure under Rule 26(a), Individual Defendants' current up-front document production is to be limited to the same documents (if any) that they have already produced to the government in the criminal proceedings, and those documents shall be delivered to Johnson Controls' counsel forthwith.



Milton I. Shadur
Senior United States District Judge

Date: June 27, 2001